

APPEAL NO. 020351
FILED APRIL 3, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 11, 2002. The hearing officer resolved the disputed issues by deciding that the respondent's (claimant) compensable cervical injury of _____, extended to and included a cervical disc herniation at the C3-4 level, and that the claimant had disability from August 24, 2001, through to January 11, 2002, the date of the CCH. The hearing officer further determined that the employer did not tender a bona fide offer of employment (BFOE) to the claimant, and that because the claimant has yet to reach maximum medical improvement (MMI), the determination of his impairment rating is not ripe for adjudication, in accord with the recommendations of the claimant's designated doctor. The appellant (carrier) appeals the hearing officer's determinations on sufficiency grounds, and specifically argues that the greater weight of the medical evidence overcomes the presumption in favor of the claimant's designated doctor. There is no response from the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable cervical injury of _____, extended to and included a cervical disc herniation at the C3-4 level, and that he had disability resulting therefrom beginning on August 24, 2001, and continuing through the date of the CCH, January 11, 2002. The record includes medical reports, specifically the MRI report of September 19, 2001¹, indicating that the claimant indeed had a cervical disc herniation at the C3-4 level, as well as some bone spurs and minor impingement on his spinal cord. The claimant testified that he had not experienced this serious a problem with his neck prior to the date of injury. The carrier introduced medical records and testimony from a chiropractor to the effect that the claimant's current cervical spine condition is a result of a degenerative process that predated the compensable injury.

The hearing officer did not err in determining that the employer did not make a BFOE to the claimant, as the only written offer, dated December 3, 2001, was presented at a time when the claimant's treating doctor had taken the claimant completely off work (after August 24, 2001). Therefore, the BFOE was not based on the claimant's work restrictions as established by his treating doctor.

The hearing officer did not err in determining that the claimant had not yet reached MMI and thus his IR was not ripe for adjudication. The hearing officer relied upon the report issued by the designated doctor dated November 2, 2001. While the carrier

¹The MRI was interpreted by a medical doctor.

presented other doctors' opinions that the claimant had reached MMI and had a 0% IR, those records amounted to a mere difference of medical opinion and were not sufficient to overcome the presumption in favor of the designated doctor's report. The report of a Texas Workers' Compensation Commission-appointed designated doctor is given presumptive weight. Sections 408.122(c) and 408.125(e). A mere difference of medical opinion by the treating doctor will ordinarily not result in overcoming the presumptive weight accorded to the designated doctor. Texas Workers' Compensation Commission Appeal No. 960034, decided February 5, 1996.

The parties presented conflicting evidence regarding each issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Terri Kay Oliver
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge